IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
JUDGMENT
D.B. Civil Special Appeal (Writ) No.23/1996
In
(S.B. Civil Writ Petition No.2136/1989)
(M.J. Nanaya Vs. State of Raj. & Anr.)

Date of Judgment : 1 March, 2007

HON'BLE THE CHIEF JUSTICE MR.S.N.JHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri J.K. Yadav for appellants.
Shri Sanjay Pareek for respondent no.2.

(Per – Mohammad Rafiq, J.)

This appeal is directed against the judgment passed by the learned Single Judge dated 28.7.1995 whereby the writ petition of the appellant was dismissed. The appellant filed the aforesaid writ petition before the learned Single Judge with the prayer that the respondents be directed to allow him all the pensionary benefits in terms of condition No.5(a)(iii) of the notification dated 25.10.72 by either

deeming that the petitioner had exercised the requisite option or by accepting the option sent by him on 2.4.88 as validly made or even now requiring him to exercise such option. Further prayer was made that the respondents should be directed to pay him pensionary benefits w.e.f from 1.11.88 and onwards which has been given to all those employees of the Electrical and Mechanical Department of Government of Rajasthan who came to RSEB and exercised the option for pensionary benefits under aforesaid clause 5(a)(iii). Alternatively it was prayed that letter dated 29.8.88 be quashed and set aside.

The appellant was initially appointed as Junior Engineer in the Electrical and Mechanical Department of Government of Rajasthan on 21.3.1957. His services were later placed at the disposal

of Rajasthan State Electricity Board like several other employee working in that department by notification of the government dated 12.2.1958. While working with the Board, he was promoted as Assistant Engineer in June 1959 and in that capacity, his services were taken to have been absorbed by the Board because a decision was taken by the Board in its meeting held on 12.11.1965 that only such employees who opt for absorption with the Board would be considered for promotion. When the appellant exercised his option in the month of November, 1965, only then was he promoted as Executive Engineer vide order dated 4.12.1965. The Board started deducting the appellant's contribution towards C.P.F. account from 1967 onwards together with its arrears and such deductions were made till his retirement by

treating him to be an employee of the Board. While serving the respondent Board, the appellant was sent on deputation to Beas Construction Board, Chandigarh from 19.7.1972 to 21.5.1973 and thereafter he rejoined the services of the Board on 6.6.73.

Contention of the appellant is that when the Government by its notification dated 25.10.72 published in the Gazette dated 26.4.73 called for the option from the employees in his category, he could not come to know about the same and therefore he could not exercise the option because he was at that time on deputation with Beas Construction Board at Chandigarh. No letter was received by him from the Board calling upon him to exercise such option. The appellant then rejoined the services of the Board on 6.6.73 and thereafter he was

promoted in the month of May, 1980 as Superintending Engineer. He was then again promoted as Dy. Chief Engineer by order dated 4.4.88. He retired while serving as Dy. Chief Engineer from the service of the respondent Board on 31.10.1988. In the meantime, the appellant on 2.4.88 submitted an application to the Secretary, RSEB along with option form duly signed by him opting for the benefit of pension contained in para 5(a)(iii) of the notification dated 25.10.72. He then submitted a representation to the Secretary to the Government in its Energy Department on 27.6.1988, followed by another representation made on 22.7.88. The Dy. Secretary (F&R), RSEB however by his letter dated 29.8.88 addressed to Dy. Secretary to the Government, Energy Department conveyed that there was no force in the

representation of the petitioner. The appellant then made further representations on 24.9.88, 31.10.88 and 26.11.88 to the same effect. In was in this background that the aforesaid writ petition was filed by the appellant.

We have heard Shri J.K. Yadav, the learned counsel for the appellant and Shri Sanjay Pareek, the learned counsel for the respondent Board.

Shri J.K. Yadav, the learned counsel for the appellant argued that according to clause (2) of notification dated 25.10.72, notice was required to be served on each and every government employee individually. No such notice was served on the appellant. Since the appellant at the relevant time was working as Executive Engineer with Beas Construction Board, Chandigarh, he could

not come to know about the same. The Gazette publication of the said notice was also made on 26.4.1973 when he was still working at Chandigarh. He upon being repatriated rejoined the service of the Board only on 6.6.73. When the appellant received the order dated 3.2.88 informing him of his retirement with effect from 31.10.88, he submitted a representation for grant of pension in terms of condition No.5 (a)(iii) of the said notification. The learned Single Judge dismissed the writ petition only on the ground that the appellant did not exercise the option dated 25.10.72 as published in the gazette on 26.4.1973. He has however failed to consider that the appellant was not serving the respondent Board actually in Rajasthan but was working with Beas Construction Board at Chandigarh on deputation. The

learned Single Judge has failed to consider clause (2) of the notification according to which notice for exercise of option was required to be served on each and every government employee personally working in the Board. He argued that there was no evidence on record that the said notice dated 25.10.1972 was ever served upon the appellant. Simply because some of the other employees such as Shri B.L. Kaushik, S.D. Bhatnagar and Shri K.L. Sharma who were also working on deputation with Beas Construction Board at the relevant time exercised such option, that does not mean that the appellant had also been intimated about such option. It was argued that the Rajasthan State Electricity Board Employees Pension Regulations were brought into force on 28.11.1988 and the appellant having been retired with effect from 31.10.1988, this

date cannot be considered as pious or sacrosanct date as there is no rationale behind choosing this date which has been arbitrarily introduced. The appellant who had retired merely few days ago on 31.10.88 cannot be deprived of the pensionary benefits just because the respondents decided to apply their newly introduced pension scheme few days thereafter. Shri J.K. Yadav, the learned counsel for the appellant relied on the judgment of division bench of this Court in Dhalu Ram Vs. Rajasthan State Electricity Board, Jaipur, D.B. Civil Writ Petition No.118/1986 and argued that the present case is squarely covered by the aforesaid decision. He, therefore prayed that the writ petition be allowed and the appellant should be held entitled to pensionary benefits.

On the other hand, Shri Sanjay Pareek, the learned counsel for the respondents opposed the writ petition and argued that the option was required to be exercised by the appellant within 90 days from the date of notice dated 25.10.1972 and he having not exercised such option would be deemed to have decided to continue with the scheme of contributory provident fund. He cannot be belatedly allowed to exercise the option close to the date of his retirement. Even as per appellant's submission, he exercised such option on 2.4.88, whereas he was due to retire on 31.10.1988 and that too when he had been informed about his retirement upon attaining the age of superannuation. Such a belated exercise of option cannot be accepted. Shri Pareek further argued that the appellant had through out been

contributing towards provident fund and in fact such amount was being deducted from his salary on regular basis. He never raised any objection for deduction of CPF contribution. In fact after his retirement he was paid full gratuity vide cheque No.0909605 dated 1.2.1989 in the sum of Rs.71,700/-. He has been further paid the amount of CPF along with interest vide cheque No.0185924 dated 19.1.89 amounting to Rs.15,278/- towards his contribution and also another payment vide cheque No.460055 dated 2.2.90 amounting to Rs.99,445/- towards the Board's contribution. Having accepted all these payments, now the appellant cannot be permitted to take a turn about and claim payment of pension. Shri Sanjay Pareek argued that apart from the individual notice, the knowledge of the scheme contained in the notification dated

25.10.72 has to be attributed to the petitioner because the said notification was duly published in the Gazette of the Government on 26.4.1973 under which the options were invited from the employees in the category of the petitioner. If the petitioner failed to timely exercise the option, he cannot be now allowed to contend that he had no knowledge about the requirement of exercising such option. Shri Sanjay Pareek, the learned counsel for the petitioner has in this connection placed reliance on the judgment of Hon'ble Supreme Court in Jai Singh B. Chauhan Vs. Punjab National Bank, (2005) 6 SCC 262. Shri Sanjay Pareek further argued that many other employees who were working on deputation with Beas Construction Board, Chandigarh with the appellant at the relevant time also exercised the option and

were accordingly allowed to opt for pension with the Government. The appellant having not done so cannot be at this stage allowed to do so. The learned Single Judge, according to Shri Sanjay Pareek, has rightly dismissed the writ petition. Shri Sanjay Pareek also argued that the pension scheme introduced by the Board dated 28.11.1988 is only prospective in nature and therefore cannot govern the cases of those who had already retired prior to that date and choice of date cannot be said to be arbitrary.

We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

On perusal of the judgment passed by the learned Single Judge, we find that the view taken therein that the appellant

in spite of the fact that he had sufficient opportunity to exercise the option, did not do so pursuant to the notification dated 25.10.1972. Knowledge of the notification dated 25.10.1972 has to be attributed to the petitioner because apart from individual notice, such notification was also published in the Gazette of the Government on 26.4.1973. The Hon'ble Supreme Court in Jai Singh B. Chauhan Vs. Punjab National Bank (supra) had the occasion to consider a similar argument that the notice for exercising such option has to be served individually on each of the employee. In that case too, the Circular requiring the members of the contributory provident fund to exercise option if they wanted to switch over to pension scheme was published in the official Gazette. Repelling the argument,

the Hon'ble Supreme Court held that the appellant (in that case) failed to exercise the option within the stipulated time as prescribed by Regulation-3 and scheme having been notified in the official Gazette, it must be treated as public notice and therefore the argument of the appellant that he was unaware of the Circular was rejected. Besides, many other employees working with Beas Construction Board, Chandigarh exercised the option such as Shri B.L. Kaushik, Shri S.B. Bhatnagar and Shri K.L. Sharma. The appellant has not shown as to what efforts did he make after he was repatriated to the service of the Board and rejoined their on 6.6.73. All those years, he had been regularly contributing to the provident fund and the Board had also been making its contribution towards the same. It was only when the

appellant was informed by the respondents that he would be retiring on attaining the age of superannuation on 31.10.1988, that the appellant submitted a representation for processing his case for grant of pension on 2.4.88 which he now prays should be considered as the letter of exercise of option. Such a plea cannot be accepted as bonafide because the knowledge of the appellant about the factum of requirement not only can be safely inferred from the surrounding facts but also because the notification dated 25.10.1972 issued by the Government was duly published in the gazette of the Government dated 26.4.1974.

So far as the Division Bench judgment relied by the learned counsel for the appellant in Dhalu Ram (supra) is concerned, that judgment turned down on its own facts. A perusal of para 3 of the said

judgment would reveal that no deductions were ever made on account of Contributory Provident Fund from the salaries of the employees concerned in that case, nor did the Board make any reciprocal corresponding contribution to the provident fund of those employees. Besides, it was specifically asserted by those employees before the Court that they exercised the option for receiving pension. Such a plea found favour with the Court in spite of denial by the Board because the Board had neither been deducting any contribution from the salary of those employees towards CPF, nor had it been making its own contribution on that account. The Division Bench judgment, in our considered view, is distinguishable on facts and therefore does not apply to the facts of the present case.

Though the learned counsel for the

appellant Shri J.K. Yadav also sought to challenge the applicability of newly framed RSEB notification dated 28.11.88 and attempted to assail the validity of the cut off date 28.11.88 with effect from which the respondent Board adopted such rules extending benefit of pension to its employee, but we do not find any merit in this argument because a pension scheme when enforced from a particular date can apply only prospectively. Besides, no material or datas have been placed before us to show as to why the date of applicability of such rules and pension scheme from 28.11.1988 makes the choice of the date arbitrary and illegal.

In view of what has been discussed above, we do not find any merit in this appeal. The appeal is therefore dismissed with no order as to costs.

(Mohammad Rafiq),J. **(S.N.Jha),CJ.**

RS/-